

In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon their cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 130.2075. (This is a GIL).

December 20, 2001

Dear Xxxxx:

This letter is in response to your letter dated August 29, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are a public accounting firm that serves a wide variety of clients that are located in Illinois and STATE. At various times we have been asked about the applicability of Illinois sales and use taxes on transactions that pertain to construction clients located outside of Illinois but who perform the work in Illinois. We have reviewed the applicable regulations, and we have made informal inquiries to the Illinois Department of Revenue and other tax authorities as well. These efforts, however, have produced conflicting answers and it is our desire to attempt to clarify this situation.

In this regard, we have prepared the following description of general facts and circumstances. From this starting point we have proposed several common scenarios relating to the purchase and delivery of goods to job sites located within the CITY. We would appreciate the Department's guidance on compliance with the use tax laws.

Description of general facts and circumstances:

Company A is a construction contractor that incorporates building materials into real estate. Company A's corporate offices and purchasing department are both located in STATE. The purchasing department routinely places orders for building materials that will be incorporated into construction jobs located in STATE and Illinois and, in particular, within the CITY. Company A uses a warehouse location in STATE, however, they will also have materials shipped directly from their suppliers to the job site.

Company A is presently paying Illinois use tax at a rate of 6.25% on the cost of building materials that are included in Illinois construction jobs.

Situation #1

Using the general facts and circumstances listed above, assume the following additional matters:

- The material supplier's sales office and warehouse are both located outside of the State of Illinois.
- Materials are purchased for a construction job located within the city limits of CITY.
- Materials are shipped from the supplier's out-of-state warehouse directly to the CITY job site.
- The supplier does not collect Illinois sales or use tax. Company A, however, pays Illinois use tax at the rate of 6.25% directly to the Illinois Department of Revenue.

The question facing Company A is which of the following additional sales and use taxes must be paid or self-assessed on the purchased materials:

- CITY use tax at 1.00%
- COUNTY use tax at 0.75%
- Regional Transportation Authority (RTA) use tax at 0.75%
- Any other sales and/or use tax

Situation #2

Using the general facts and circumstances listed above, assume the following additional matters:

- The material supplier's sales office and warehouse are both located within the State of Illinois.
- Materials are purchased for a construction job located within the city limits of CITY.
- Materials are shipped directly from the supplier's Illinois warehouse to the CITY job site.
- The supplier does not collect Illinois sales or use tax. Company A, however, pays Illinois use tax at the rate of 6.25% directly to the Illinois Department of Revenue.

The question facing Company A is which of the following additional sales and use taxes must be paid or self-assessed on the purchased materials:

- CITY sales and use tax at 1.00%
- COUNTY use tax at 0.75%
- Regional Transportation Authority (RTA) use tax at 0.75%
- Any other sales and/or use tax

Situation #3

Using the general facts and circumstances listed above, assume the following additional matters:

- The material supplier's sales office is located within the State of Illinois; however, the warehouse from which the materials will be shipped is located in a state other than Illinois.
- Materials are purchased for a construction job located within the city limits of CITY.
- Materials are shipped directly from the supplier's out-of-state warehouse to the CITY job site.
- The supplier does not collect Illinois sales or use tax. Company A, however, pays Illinois use tax at the rate of 6.25% directly to the Illinois Department of Revenue.

The question facing Company A is which of the following additional sales and use taxes must be paid or self-assessed on the purchased materials:

- CITY sales and use tax at 1.00%
- COUNTY use tax at 0.75%
- Regional Transportation Authority (RTA) use tax at 0.75%
- Any other sales and/or use tax

Situation #4

Using the general facts and circumstances listed above, assume the following additional matters:

- The material supplier's sales office and warehouse are both located outside of the State of Illinois.
- Materials are purchased for a construction job located within the city limits of CITY.
- Materials are shipped directly from the supplier's out-of-state warehouse to Company A's warehouse location for additional processing. Company A's warehouse is located in STATE.
- Company A later ships the materials from their STATE location to the CITY job site.
- Company A pays Illinois use tax at the rate of 6.25% directly to the Illinois Department of Revenue.

The question facing Company A is which of the following additional sales and use taxes must be paid or self-assessed on the purchased materials:

- CITY sales and use tax at 1.00%
- COUNTY use tax at 0.75%
- Regional Transportation Authority (RTA) use tax at 0.75%
- Any other sales and/or use tax

Situation #5

Using the general facts and circumstances listed above, assume the following additional matters:

- The material supplier's sales office and warehouse are both located outside of the State of Illinois.
- Materials are purchased for general stock and not for a particular job.
- Materials are shipped directly from the supplier's out-of-state warehouse to Company A's warehouse location for additional processing. Company A's warehouse is located in STATE.
- Company A later assigns the materials to a CITY job and ships the materials from their STATE location to the CITY job site.
- Company A was charged STATE sales tax by their supplier on the original purchase.
- Company A pays Illinois use tax at the rate of 6.25% directly to the Illinois Department of Revenue. Company A reduces this amount by a credit for use taxes paid to another state.

The question facing Company A is which of the following additional sales and use taxes must be paid or self-assessed on the purchased materials:

- CITY sales and use tax at 1.00%
- COUNTY use tax at 0.75%
- Regional Transportation Authority (RTA) use tax at 0.75%
- Any other sales and/or use tax

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We believe that we have addressed all of the common scenarios facing our clients. Through this inquiry we are hopeful that we can better advise them on compliance with the Illinois use tax laws. If you should have any questions or require any additional information, please feel free to contact me. Thank you for your assistance with this matter.

The Department of Revenue does not administer the COUNTY Use Tax and it is imposed only upon items that are titled and registered in the State of Illinois. Please see 55 ILCS 5/5-1008. The Regional Transportation Authority Use Tax is imposed only upon items that are titled and registered in the State of Illinois. The CITY does administer a use tax that is imposed upon tangible personal property. The Department does not administer the CITY Use Tax on non-titled tangible personal property. Please direct any questions regarding this tax to the CITY Department of Revenue.

For your general information, please see the enclosed copy of Sec. 270.115 of the Home Rule Municipal Retailers' Occupation Tax for guidance concerning jurisdictional questions. In general, the imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred.

The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. For these transactions the local tax will be incurred. Although 86 Ill. Adm. Code 270.115 deals

with the municipal Home-Rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department.

If a purchase order is accepted outside the State, but the property being sold is located in an Illinois jurisdiction that has imposed a local tax (see, for example, Section 270.115(b)(3)), then the location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes.

The following is a description of how construction contractors are taxed in Illinois. The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail. A "sale at retail" is any transfer of the ownership of, or title to, tangible personal property to a purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration. See the enclosed copies of 86 Ill. Adm. Code 130.101 and 130.201.

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. The term "construction contractors" includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term "contractor" means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

Contractors incur Retailers' Occupation Tax upon the sale of items that are not permanently affixed to real estate. However, please note that Section 1 of the Retailers' Occupation Tax Act states that "[c]onstruction contracts for the improvement of real estate consisting of video, security, and all telecommunication systems do not constitute engaging in a business of selling tangible personal property at retail within the meaning of this Act if they are sold at one specified contract price". Consequently, even if some items used in such contracts are not permanently affixed, the liability incurred by the contractor is a Use Tax liability if the provisions of this section are met.

As stated above, contractors owe Use Tax on the items they purchase for incorporation into realty. If you purchase these items from an out-of-State supplier that does not collect the Use Tax from you, you should remit this tax to the Department at the rate of 6.25%. In regards to the local taxes you have inquired about, if the items you are purchasing for your use in Illinois are not titled or registered then these local use taxes are not imposed. Therefore, in situations #1 through #5 no local use tax administered by the Department is due. In situations #2 and #3, your letter indicates that an Illinois retailer is making sales. If the selling occurs in a local jurisdiction imposing a local occupation tax (e.g. a Home Rule Municipal Retailers' Occupation Tax, The COUNTY Home Rule Retailers' Occupation Tax, or the RTA Retailers' Occupation Tax), then that retailer will incur tax. Such retailers are authorized to collect a corresponding amount of local tax reimbursement from customers. As a result, if tax is due by the retailer in these instances, the retailer will collect local occupation tax reimbursement from you. In determining whether local occupation tax is due, see 86 Ill. Adm. Code 270.110. If your supplier does not collect the tax from you, the 6.25% tax rate that you have been self-assessing is correct.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.